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FILED

June 14, 2007

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

By: Joseph Donofrio
Deputy Attorney General
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION OR)
REVOCATION OF THE LICENSE OF)

CONSENT ORDER

ALEXANDER BRAVER, M.D.)
LICENSE NO. MA63119)

TO PRACTICE MEDICINE AND SURGERY)
IN THE STATE OF NEW JERSEY)

This matter was opened to the New Jersey State Board of Medical Examiners ("Board") upon receipt of information revealing the following:

1. Respondent, Alexander Braver, M.D., License No. MA63119, is a physician licensed in the State of New Jersey and has been licensed at all times relevant hereto.

2. On or about June 15, 2006 in the Criminal Court of the City of New York, County of Kings, Respondent was found guilty, based on a plea agreement, of Attempted Grand Larceny in the Fourth Degree, in violation of New York Penal Law Sections 110 and 155.30, a class A misdemeanor. Respondent was sentenced to three years probation and ordered to pay \$28,000.00 in restitution.

3. On or about November 20, 2006, the New York State Department of Health, State Board for Professional Medical Conduct ("New York Board"), filed a Statement of Charges alleging that Respondent committed professional misconduct, as defined by N.Y.

CERTIFIED TRUE COPY

Educ. Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law.

4. On or about January 17, 2007, an adjudicatory hearing was held at the offices of the New York state Department of Health. The purpose of the hearing was to consider the allegations set forth in the Statement of Charges filed on November 20, 2006. At the conclusion of the hearing, the New York Board issued a Determination and Order dated January 26, 2007. The New York Board held that Respondent violated N.Y. Educ. Law §6530(9)(i) by having been convicted of committing an act constituting a crime under New York state law. The New York Board suspended Respondent's license to practice medicine in New York for three years.

5. The above disciplinary action taken by the sister State of New York provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g), in that Respondent has had his authority to engage in the activity regulated by the Board suspended by another state for reasons consistent with N.J.S.A. 45:1-21.

6. The above criminal conviction in the sister state of New York provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(f), in that Respondent has been convicted of a crime involving moral turpitude and relating adversely to the activity regulated by the Board.

7. The above disciplinary action taken by the sister state of New York provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(e), in that, Respondent has engaged in professional misconduct.

It appearing that Respondent wishes to resolve this matter without formal proceedings and for good cause shown,

ACCORDINGLY IT IS ON THIS 14th DAY OF June, 2007

ORDERED THAT:

1. Respondent's license to practice medicine and surgery in the State of New Jersey shall be suspended for a minimum of three years and until such time that he can demonstrate to the Board that he has satisfied all the terms and conditions of his criminal probation, and show proof that he holds an active unrestricted license to practice medicine in the State of New York.

2. In the event that Respondent seeks reinstatement of his New Jersey medical license at any time in the future, this Order shall require Respondent to appear before the Board, or a Committee thereof, to demonstrate fitness to practice medicine and to prove that he has satisfied all the terms and conditions of this Order.

STATE BOARD OF MEDICAL EXAMINERS



By: _____

Sindy Paul, M.D.
Board President

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the Board to enter into this Order.



Alexander Braver, M.D.

4. 26.07.

Date

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
ALEXANDER BRAVER, M.D.
CO-06-07-3862-A

STATEMENT
OF
CHARGES

ALEXANDER BRAVER, M.D., Respondent, was authorized to practice medicine, in New York state on June 20, 1995, by the issuance of license number 199890 by the New York State Education Department.

FACTUAL ALLEGATIONS


A. On or about June 15, 2006, in the Criminal Court of the City of New York, County of Kings, New York, Respondent was found guilty, based on a plea of guilty, of Attempted Grand larceny in the fourth degree, in violation of New York Penal Law §110 and 155.30, a class A misdemeanor, and was sentenced to three (3) years probation, \$28,000 restitution, and a 5% surcharge.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *Nov 20*, 2006
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX I

ORIGINAL



STATE OF NEW YORK
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

DEPARTMENT OF HEALTH

IN THE MATTER

OF

ALEXANDER BRAVER, M.D.
CO-06-07-3862-A

NOTICE OF

REFERRAL

PROCEEDING

TO: ALEXANDER BRAVER, M.D.
127 Croak Avenue
Staten Island, NY 10314

ALEXANDER BRAVER, M.D.
1775 Richmond Avenue
Staten Island, NY 10314

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 17th day of January, 2007, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

November 30, 2006



PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER
OF
ALEXANDER BRAVER, M.D.

DETERMINATION

AND

ORDER

BPMC #07-19

A hearing was held on January 17, 2007, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated November 30, 2006, were served upon the Respondent, **Alexander Braver, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Donald Cherr, M.D.**, Chairperson, **Edmund A. Egan, II, M.D.**, and **Mr. Henry Sloma**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared at the hearing and was represented by **Charles L. Emma, Esq.**

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a

violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Alexander Braver, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex."

These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Alexander Braver, M.D., the Respondent, was authorized to practice medicine in New York State on June 20, 1995, by the issuance of license number 199890 by the New York State Education Department (Petitioner's Ex. 4).

2. On June 15, 2006, in the Criminal Court of the City of New York, County of Kings, the Respondent was found guilty, based on a plea of guilty, of Attempted Grand Larceny in the Fourth Degree, in violation of New York Penal Law Sections 110 and

155.30, a class A misdemeanor, and was sentenced to three years probation, \$28,000.00 restitution, and a five percent surcharge (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was convicted of Attempted Grand Larceny in the Fourth Degree. The conviction was based in large part on the services that the Respondent provided to an undercover investigator for the New York Attorney General's Medicaid Fraud Control Unit. The investigator, posing as a Medicaid recipient, received psychiatric services from the Respondent on several occasions. For most of these visits, the investigator was in the presence of the Respondent for eight minutes or less. The Respondent, however, billed the Medicaid Program using a billing code for the provision of at least 37 minutes of psychotherapy.

The Respondent testified that these overbillings occurred because he forgot to tell his billing agent that these visits were for shorter time periods than the 37 or more minutes that constituted the length of the typical psychotherapy session for his practice. The billing agent, therefore, mistakenly used the billing code for a typical session, the code for 37 or more minutes.

The Respondent's argument is rejected. The Respondent was convicted of Attempted Grand Larceny in the Fourth Degree. One of the elements of grand larceny and attempted grand larceny is that there be "intent to deprive another of property" wrongfully (Penal Law Section 155.05[1]). There is no such thing as careless or

unintentional larceny. Public Health Law Section 230(10)(p) prohibits this Hearing Committee from considering any defense that constitutes a denial of any element underlying a criminal conviction. The Respondent's argument is, in effect, a denial of an element of the crime for which he was convicted. Therefore, the Hearing Committee rejects the Respondent's claim that he did not overbill the Medicaid Program with the intention of obtaining reimbursement wrongfully.

The Respondent also complained that the undercover investigator framed him. This argument also is rejected. The undercover investigator tricked the Respondent into thinking that the investigator was a Medicaid recipient, but he did not trick the Respondent into using the wrong billing code. The Respondent made that decision without any help from the investigator.

The conviction was also based on a charge that the Respondent billed for more sessions of psychotherapy than could have been provided during his office hours. The Respondent testified that he did not bill for more sessions than he provided. This argument is rejected because it amounts to a denial of guilt for the crime for which the Respondent was convicted.

The Petitioner recommended revocation of the Respondent's license or any other sanction sufficient to protect the public. Because there were no quality of care issues in this case and because the Respondent has a history of service to the community both in the United States and in his native land, his license will not be revoked. However, his criminal acts and his lack of candor about them during the hearing merit a serious sanction. The Respondent's license will be suspended for three years.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is suspended for three years. In order to allow for the safe and orderly transfer of patient care to other physicians, the suspension will commence thirty days after the effective date of this Order.

2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Rochester, New York

January 26, 2007

Donald Cherr

Donald Cherr, M.D.
Chairperson

Edmund A. Egan, II, M.D.
Henry M. Sloma